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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213744
Party	Plaintiff Yuko Fujita
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Date	10/13/2014
Attachments	Counterclaim Answer.pdf(145323 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Opposition No. 91213744

YUKO FUJITA,

Opposer,

v.

PEARL ENTERPRISES,

LLC, Applicant.

Mark: KINOKI

Serial No. 85941092

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**ANSWER TO COUNTERCLAIM**

**(Cancellation of U.S. Registration No. 3,943,580)**

Opposer, Yuko Fujita, by and through her undersigned attorney, answers the Counterclaim by Applicant, Pearl Enterprises for cancellation of U.S. Registration No. 3,943,580, states as follows.

1. Applicant is a New Jersey limited liability company having a business address of 379 E 7th St., Lakewood, New Jersey 08701.

Answer: Admits

2. According to USPTO records, Opposer, by its Notice of Opposition (the Notice), claims that there is an individual Japanese citizen named Yuko Fujita doing business at 1738-2 Kikugawa, Shimada, Shizuoka 428-0037 Japan.

Answer: Admits

3. U.S. Registration No. 3,943,580 is for the mark KINOKI for wound dressings; gauze; adhesive bandages; bandages for dressings; medical adhesives for binding wounds, namely, adhesive pads in International Class 5 (the Registration).

Answer: Admits

4. Opposer has asserted the Registration as a basis for Opposers Notice against Applicants U.S. Application Serial No. 85941092 for the mark KINOKI.

Answer: Admits

5. Opposer attached, as Exhibit A to the Notice, a TSDR status report for the Registration, dated 2013-11-25 17:32:19 EST.

Answer: Admits

6. The Registration issued on April 12, 2011, and resulted from U.S. application serial no. 85092943, filed July 26, 2010 (Opposer 's Application), by Annette P. Heller of Heller & Associates, the same counsel for Opposer in this Opposition, on behalf of Yuko Fujita.

Answer: Admits

7. Opposers Registration is for the same literal mark as Applicants KINOKI trademark.

Answer: Admits

8. Applicant uses the mark KINOKI that is the subject of Applicant's opposed U.S. Application Serial No. 85941092 in connection with cleansing foot pads. Attached as **Exhibit 1** is a TSDR status report for Applicants U.S. Application Serial No. 85941092.

Answer: Denies. Exhibit 1 shows that the products covered by this application is:

*Aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream.*

9. In the alternative, for at least the reason that Opposer has asserted the Registration against Applicants application in this Opposition, Applicant will be damaged by the maintenance of the Registration.

Answer: Denies.

#### **COUNT I FRAUD**

10. Applicant repeats and re-alleges the allegations in the foregoing paragraphs as if

fully set forth herein.

Answer: Opposer repeats and re-alleges her answers as if fully set forth herein.

11. Ms. Heller signed Opposers Application on behalf of Yuko Fujita, including the declaration in support of Opposers Application. Yuko Fujita did not sign the application or the declaration.

Answer: Admits

12. Upon information and belief, there does not exist a person named Yuko Fujita who is connected with the Registration or the sale of the products claimed in the Registration.

Answer: Denies.

13. The specimen of use filed in support of Opposers Application was described in the application as instruction sheet sold with products.

Answer: Admits

14. The specimen of use filed in support of Opposer's Application was merely a PDF copy of a purported specimen; it was not a scanned copy or photograph of an actual instruction sheet enclosed with the purported goods that are the subject of Opposers Application.

Answer: Denies

15. Opposer's Application did not include any specimen that purportedly showed the mark KINOKI on the purported goods that are the subject of Opposer's Application.

Answer: Denies

16. According to USPTO records, Opposer's claimed address of 1738-2 Kikugawa, Shimada, Shizuoka 428-0037 Japan is the same address as Kenrico Ltd., a Japanese corporation (*see, e.g.*, U.S. Serial Nos. 85035463, 85070983, 85035458, 77794199, 77858709, 77858704, 77858699, 77858696, 77794229, 77794223, 77794218, 77794204, 77794192, 77794181, 77794177, 77794172, 77794165, 77794158, 77794152, 77794141, 77794133, 77778592, 77778569, and 77778556).

Answer: Admits. This is the address of Opposer's Licensee.

17. Upon information and belief, Kenrico Ltd. operates its Kikugawa factory at 17382 Kikugawa, Shimada, Shizuoka 428-0037 Japan. *See Exhibit 2; see also*

[www.kenrico.com/company.html](http://www.kenrico.com/company.html) (last visited September 16, 2014).

Answer: Admits

18. Upon information and belief, Opposer does not reside at 1738-2 Kikugawa, Shimada, Shizuoka 428-0037 Japan.

Answer: Admits. This is the address of Opposer's Licensee.

19. Kenrico Ltd. is not an owner of the Registration.

Answer: Admits. Kenrico is the Licensee of Opposer.

20. Kenrico Ltd. is not a party to this Opposition.

Answer: Admits. Kenrico is Opposer's licensee

21. Upon information and belief, Opposer is not registered to do business in the United States and does not have any FDA registrations in the United States.

Answer: Admits

22. Upon information and belief, Opposers specimen submitted in support of Opposer's Application was created solely for the purpose of obtaining a registration and not part of a bona fide use of the mark in interstate commerce.

Answer: Denies

23. Despite not making a bona fide use of the mark KINOKI in the United States, Opposer, through its attorney of record, filed Opposer's Application with a false declaration.

Answer: Denies

24. For at least the foregoing reasons, Opposer is not a bona fide owner of any rights in the mark KINOKI and does not have any valid, subsisting rights in the Registration.

Answer: Denies

25. For at least the foregoing reasons, Opposer is not, and was not at the time of filing its application for registration, the rightful owner of the registered mark.

Answer: Denies

26. Upon information and belief, Opposer knew that the aforementioned representations were false and material to Opposer's right to

registration.

Answer: Denies

27. Upon information and belief, Opposer intended to deceive the USPTO by making such false representations.

Answer: Denies

28. For at least the foregoing reasons, Opposer's Application resulting in the Registration contained knowingly false material statements and a fraudulent specimen, submitted with intent to deceive the USPTO.

Answer: Denies

29. For at least the foregoing reasons, Opposer's Registration was fraudulently obtained.

Answer: Denies

#### **COUNT II NON-USE**

30. Applicant repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

Answer: Opposer repeats and re-alleges her answers as if fully set forth herein

31. Upon information and belief, Opposer has never sold in the United States any wound dressings; gauze; adhesive bandages; bandages for dressings; or medical adhesives for binding wounds, namely, adhesive pads.

Answer: Denies

32. For at least the foregoing reasons, there was no bona fide use of Opposers mark in commerce prior to the filing of the use-based application for its registration under Trademark Act § 1(a), 15 U.S.C. § 1051(a).

Answer: Denies

### **COUNT III - ABANDONMENT**

33. Applicant repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

Answer: Opposer repeats and re-alleges her answers as if fully set forth herein

34. Upon information and belief, Opposer has not used its purported mark for a period of at least three consecutive years. Such nonuse is prima facie evidence of abandonment.

Answer: Denies that Opposer has not used the mark for a period of at least three consecutive years. Admits that three consecutive years of nonuse is a prima facie evidence of abandonment.

35. For at least the foregoing reasons, to the extent Opposer has ever used its purported mark, Opposers mark has been abandoned due to nonuse with intent not to resume use. Since, upon information and belief, Opposer has not made a bona fide use of the mark, Opposer lacks a bona fide intent to resume use.

Answer: Denies

WHEREFORE, Opposer prays that this Counterclaim be denied.

Respectfully submitted,

YUKO FUJITA



By: \_\_\_\_\_

Dated: 10/13/14

Annette P. Heller, *Attorney for Opposer, Yuko Fujita*

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of October, 2014, a true and correct copy of the foregoing Answer to Counter Claim has been served via email, per agreement, upon the following counsel of record for Applicant:

CKindade@foxrothschild.com